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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,561	09/08/2005	Rejean Boyer	DC5051USPCT	2692

7590 04/16/2009  
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EXAMINER
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CHANDLER, SARA M

ART UNIT	PAPER NUMBER
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3693

MAIL DATE	DELIVERY MODE
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04/16/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/517,561	BOYER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	SARA CHANDLER	3693	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/3/06; 1/17/06; 8/30/07</u> .                                | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's election without traverse of Group I in the reply filed on 3/17/09 is acknowledged. Thus, claims 1-10, 12, and 13 are pending.

### ***Claim Interpretation***

1. In determining patentability of an invention over the prior art, all claim limitations have been considered and interpreted as broadly as their terms reasonably allow. See MPEP § 2111.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Pruter*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See MPEP § 2111.

2. All claim limitations have been considered. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art. The following language is interpreted as not further limiting the scope of the claimed invention. See MPEP 2106 II C.

Language in a method claim that states only the intended use or intended result, but the expression does not result in a manipulative difference in the steps of the claim. Language in a system claim that states only the intended use or intended result, but does not result in a structural difference between the claimed invention and the prior art.

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In other words, if the prior art structure is capable of performing the intended use, then it meets the claim.

Claim limitations that contain statement(s) such as “*if, may, might, can could*”, as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.

Claim limitations that contain statement(s) such as “*wherein, whereby*”, that fail to further define the steps or acts to be performed in method claims or the discrete physical structure required of system claims.

USPTO personnel should begin claim analysis by identifying and evaluating each claim limitation. For processes, the claim limitations will define steps or acts to be performed. For products, the claim limitations will define discrete physical structures or materials. Product claims are claims that are directed to either machines, manufactures or compositions of matter. See MPEP § 2106 II C.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) “adapted to” or “adapted for” clauses,
- (C) “wherein” clauses, or
- (D) “whereby” clauses.

See MPEP § 2106 II C.

3. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct

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inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-10 and 12-13** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re Claim 1: Mixing Statutory Classes The preamble of the claim appears to be describing the structural components typical of a system/apparatus claim (e.g., information retrieval system, commodity analysis system) however, the body of the claim recites steps or acts performed typical of a method/process claim.

Claim 1 recites the limitation "the currency". There is insufficient antecedent basis for this limitation in the claim.

Dependent claims are further rejected based on the same rationale as the claims from which they depend.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-10 and 12-13** are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pickett, US Pat. No. 6,671,698.

**Re Claim 1:** Pickett discloses for an information retrieval system coupled to at least one commodity analysis system configured to analyze at least one commodity to generate commodity data comprising at least one commodity characteristic (Pickett, Figs. 1-6), a method of managing the commodity data for a chain of production in which one or more commodities are used in one or more production steps (Pickett, abstract, col. 2, lines 32-44; col. 4, lines 5-12; col. 5, lines 50+ - col. 6, line 12; col. 7, lines 15-34; col. 13, lines 32-50; col. 16, lines 34-40; col. 17, lines 22-41; col. 18, lines 51- col. 19, line 2; col. 20, line 63+ - col. 21, line 4; col. 24, lines 24-55; col. 27, lines 7-31; col. 30, lines 50-65), the method comprising:

updating the at least one commodity analysis system to maintain the currency of the commodity analysis system (Pickett, abstract, col. 2, lines 32-44; col. 4, lines 5-12; col. 5, lines 50+ - col. 6, line 12; col. 7, lines 15-34; col. 13, lines 32-50; col. 16, lines 34-40; col. 17, lines 22-41; col. 18, lines 51- col. 19, line 2; col. 20, line 63+ - col. 21, line 4; col.

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24, lines 24-55; col. 27, lines 7-31; col. 30, lines 50-65 “the currency” - a time or period, state of being current);

receiving the commodity data from the at least one commodity analysis system for discrete quantities of at least one commodity used or produced by the chain of production (Pickett, abstract, col. 2, lines 32-44; col. 4, lines 5-12; col. 5, lines 50+ - col. 6, line 12; col. 7, lines 15-34; col. 13, lines 32-50; col. 16, lines 34-40; col. 17, lines 22-41; col. 18, lines 51- col. 19, line 2; col. 20, line 63+ - col. 21, line 4; col. 24, lines 24-55; col. 27, lines 7-31; col. 30, lines 50-65);

storing the commodity data to the information retrieval system (Pickett, abstract, col. 2, lines 32-44; col. 5, lines 50+ - col. 6, line 12; col. 10, lines 51-63; col. 13, lines 54-63; col. 17, lines 45-56;);

and determining commodity information in accordance with the contents of the information retrieval system (Pickett, col. 5, line 50+-col. 6, line 28; col. 17, lines 22-41; col. 21, lines 5-10; col. 21, lines 50-65; col. 25, lines 38-64; col. 27, lines 8-31; col. 27, lines 45-63; col. 28, lines 27-47; col. 31, lines 45-53; col. 33, lines 36-42; col. 33 line 65+ - col. 34, line 13).

Alternatively,

Pickett discloses for an information retrieval system coupled to at least one commodity analysis system configured to analyze at least one commodity to generate commodity data comprising at least one commodity characteristic (Pickett, Figs. 1-6), a method of managing the commodity data for a chain of production in which one or more

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commodities are used in one or more production steps (Pickett, abstract, col. 2, lines 32-44; col. 4, lines 5-12; col. 5, lines 50+ - col. 6, line 12; col. 7, lines 15-34; col. 13, lines 32-50; col. 16, lines 34-40; col. 17, lines 22-41; col. 18, lines 51- col. 19, line 2; col. 20, line 63+ - col. 21, line 4; col. 24, lines 24-55; col. 27, lines 7-31; col. 30, lines 50-65), the method comprising:

updating the at least one commodity analysis system (Pickett, abstract, col. 2, lines 32-44; col. 4, lines 5-12; col. 5, lines 50+ - col. 6, line 12; col. 7, lines 15-34; col. 13, lines 32-50; col. 16, lines 34-40; col. 17, lines 22-41; col. 18, lines 51- col. 19, line 2; col. 20, line 63+ - col. 21, line 4; col. 24, lines 24-55; col. 27, lines 7-31; col. 30, lines 50-65 “the currency” – money, medium of exchange for example used by users of the system with respect to the commodity);

receiving the commodity data from the at least one commodity analysis system for discrete quantities of at least one commodity used or produced by the chain of production (Pickett, abstract, col. 2, lines 32-44; col. 4, lines 5-12; col. 5, lines 50+ - col. 6, line 12; col. 7, lines 15-34; col. 13, lines 32-50; col. 16, lines 34-40; col. 17, lines 22-41; col. 18, lines 51- col. 19, line 2; col. 20, line 63+ - col. 21, line 4; col. 24, lines 24-55; col. 27, lines 7-31; col. 30, lines 50-65);

storing the commodity data to the information retrieval system (Pickett, abstract, col. 2, lines 32-44; col. 5, lines 50+ - col. 6, line 12; col. 10, lines 51-63; col. 13, lines 54-63; col. 17, lines 45-56;);



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and determining commodity information in accordance with the contents of the information retrieval system (Pickett, col. 5, line 50+-col. 6, line 28; col. 17, lines 22-41; col. 21, lines 5-10; col. 21, lines 50-65; col. 25, lines 38-64; col. 27, lines 8-31; col. 27, lines 45-63; col. 28, lines 27-47; col. 31, lines 45-53; col. 33, lines 36-42; col. 33 line 65+ - col. 34, line 13).

Pickett fails to explicitly disclose:

wherein updating the at least one commodity analysis system is done in order to maintain the currency of the commodity analysis system.

Regarding, wherein updating the at least one commodity analysis system is done in order to maintain the currency of the commodity analysis system.

Official Notice Official Notice is taken that it was old and well-known at the time the invention was made consider the medium of exchange used by users for purposes such as accurate record keeping and determining pricing.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Pickett to provide wherein updating the at least one commodity analysis system is done in order to maintain the currency of the commodity analysis system.

Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Thus, the claimed subject

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matter likely would have been obvious under KSR. KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

**Re Claim 2:** Pickett discloses the claimed invention supra and Pickett further discloses wherein the at least one commodity comprises one of an agricultural commodity, an aqua cultural commodity, an industrial commodity, a biological commodity and a pharmaceutical commodity (Pickett, abstract, col. 3, lines 57+ - col. 4, line 4; col. 34, lines 27-38).

**Re Claim 3:** Pickett discloses the claimed invention supra and further discloses wherein the production steps comprise one or more of acquiring, blending, refining, and transporting the discrete quantities and wherein the commodity data is generated in response to a production step (Pickett, abstract, col. 2, lines 32-44; col. 4, lines 5-12; col. 5, lines 50+ - col. 6, line 12; col. 7, lines 15-34; col. 16, lines 34-40; col. 17, lines 22-41; col. 18, lines 51- col. 19, line 2; col. 24, lines 24-55; col. 30, lines 50-65) .

**Re Claim 4:** Pickett discloses the claimed invention supra and Pickett further discloses including providing the commodity information to determine a use of at least a portion of at least one of the discrete quantities in the chain of production (Pickett, abstract, col. 3, lines 57+-col. 4, line 4, col. 5, lines 18-26; col. 9, lines 49+-col. 10, line 30; col. 13, lines 54+ - col. 14, line 13; col. 14, lines 32-40; col. 16, lines 22-33; col. 18, lines 8-18; col. 18, lines 30+-col. 15, line 28; col. 20, lines 5-42; col. 21, lines 12-28).

**Re Claim 5:** Pickett discloses the claimed invention supra and Pickett further discloses wherein the use is defined in accordance with a standard responsive to one or more

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commodity characteristics (Pickett, abstract, col. 3, lines 57+-col. 4, line 4, col. 5, lines 18-26; col. 9, lines 49+-col. 10, line 30; col. 13, lines 54+ - col. 14, line 13; col. 14, lines 32-40; col. 16, lines 22-33; col. 18, lines 8-18; col. 18, lines 30+-col. 15, line 28; col. 20, lines 5-42; col. 21, lines 12-28).

**Re Claim 6:** Pickett discloses the claimed invention supra and Pickett further discloses wherein the standard defines one of an identity preservation program, a specialty trait tracking program and a food safety certification program (Pickett, col. 21, lines 12-28; col. 34, lines 14-26).

**Re Claim 7:** Pickett discloses the claimed invention supra and further discloses wherein said determining commodity information includes tracing commodity data for particular discrete quantities as said quantities flow through said chain of production (Pickett, Figs. 1, 4, 5, 6,7,8,9,11, abstract, col. 2, lines 32-44; col. 5, line 50+ - col. 6, line 28; col. 9, lines 25-36; col. 11, lines 58-64; col. 13, lines 25-31; col. 13, lines 50-53; col. 16, lines 20-21; col. 17, lines 42-44; col. 22, lines 15-17; col. 27, lines 7-31);

**Re Claim 8:** Pickett discloses the claimed invention supra and further discloses wherein instances of said commodity data are generated for a particular discrete quantity as the quantity flows through the chain of production and wherein said tracing comprises associating said instances of the commodity data with one another in the information retrieval system (Pickett, Figs. 1, 4, 5, 6,7,8,9,11, abstract, col. 2, lines 32-44; col. 5, line 50+ - col. 6, line 28; col. 9, lines 25-36; col. 11, lines 58-64; col. 13, lines

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25-31; col. 13, lines 50-53; col. 16, lines 20-21; col. 17, lines 42-44; col. 22, lines 15-17; col. 27, lines 7-31);.

**Re Claim 9:** Pickett discloses the claimed invention supra and Pickett further discloses wherein the at least one commodity characteristic includes at least one of a measured characteristic of the particular discrete quantity and a secondary characteristic determined for the particular discrete quantity (Pickett, abstract, col. 3, lines 57+-col. 4, line 4, col. 5, lines 18-26; col. 9, lines 49+-col. 10, line 30; col. 13, lines 54+ - col. 14, line 13; col. 14, lines 32-40; col. 16, lines 22-33; col. 18, lines 8-18; col. 18, lines 30+-col. 15, line 28; col. 20, lines 5-42; col. 21, lines 12-28).

**Re Claim 10:** Pickett discloses the claimed invention supra and Pickett further discloses wherein the commodity data includes one or more source data identifying characteristics of the source of the commodity (Pickett, abstract, col. 3, lines 57+-col. 4, line 4, col. 5, lines 18-26; col. 9, lines 49+-col. 10, line 30; col. 13, lines 54+ - col. 14, line 13; col. 14, lines 32-40; col. 16, lines 22-33; col. 18, lines 8-18; col. 18, lines 30+-col. 15, line 28; col. 20, lines 5-42; col. 21, lines 12-28).

**Re Claim 12:** Pickett discloses the claimed invention supra and Pickett further discloses wherein updating comprises transmitting to the at least one commodity analysis system at least one of a software update, a lease update, and a data update (Pickett, abstract, col. 2, lines 32-44; col. 4, lines 5-12; col. 5, lines 50+ - col. 6, line 12; col. 7, lines 15-34; col. 13, lines 32-50; col. 16, lines 34-40; col. 17, lines 22-41; col. 18,

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lines 51- col. 19, line 2; col. 20, line 63+ - col. 21, line 4; col. 24, lines 24-55; col. 27, lines 7-31; col. 30, lines 50-65).

**Re Claim 13:** including providing a user interface for obtaining commodity information determined from commodity data stored to the information retrieval system (Pickett, col. 5, line 50+-col. 6, line 28; col. 17, lines 22-41; col. 21, lines 5-10; col. 21, lines 50-65; col. 25, lines 38-64; col. 27, lines 8-31; col. 27, lines 45-63; col. 28, lines 27-47; col. 31, lines 45-53; col. 33, lines 36-42; col. 33 line 65+ - col. 34, line 13).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 20040078390 A1

US 20040074446 A1

US 20040059737 A1

US 20040015477 A1

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US 20020032497 A1

US 20010029996 A1

US 7085777 B2

US 7062513 B2

US 6995675 B2

US 6796504 B2

US 6691135 B2

US 6664897 B2

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARA CHANDLER whose telephone number is (571)272-1186. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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SMC  
/JAGDISH N PATEL/  
Primary Examiner, Art Unit 3693